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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Federal Communications Commission
Office of Secretary

In the Matter of)	FCC 02-201
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-112
Table of Allotments, FM Broadcast Stations)	RM-9027
(Anniston and Ashland, AL, College Park,)	RM-9268
Covington, and Milledgeville, Georgia))	RM-9384

To: The Commission

FIFTH MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

**PRESTON W. SMALL
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November 7, 2003

Preston W. Small (Mr. Small), by his attorney, hereby seeks leave to supplement the record in this proceeding. In support whereof, the following is respectfully submitted:

1) This proceeding began approximately seven years ago when Mr. Small, first through a proposed assignee, and then in his own name, filed a petition for rulemaking seeking to improve his Station WLRR-FM licensed to Milledgeville, Georgia by upgrading and moving it to Covington and later Social Circle. *See Petition for Rulemaking*, filed December 23, 1996 by Scotts Trail Radio, Inc.; *Petition for Rulemaking*, filed July 28, 1997 by Preston W. Small. Thereafter, WNNX LICO, Inc. (WNNX) filed a competing petition for rulemaking seeking to move Station WHMA-FM from Alabama to College Park, Georgia, within the Atlanta Urbanized Area. *See Petition for Rulemaking*, filed November 6, 1997 by WNNX License Investment Co., subsequently referred to as WNNX LICO, Inc.

2) WNNX asserted that in the *Tuck* analysis the “Hartsfield Airport” is one “of the most visible signs of College Park’s economic independence” from the Atlanta Urbanized Area. *WNNX Petition for Rulemaking*, at 12. Mr. Small’s August 31, 1998 *Comments and Counterproposal* demonstrated that, rather than being an indicator of “independence,” “The William B. Hartsfield International Airport” demonstrates College Park’s economic dependence upon the Atlanta Urbanized Area because the Airport is owned and operated by the City of Atlanta and that the Airport has a profound economic impact upon the regional area and that the Airport inexorably links College Park to the Atlanta Urbanized Area. Mr. Small’s August 31, 1998 *Comments and Counterproposal*, at 10-18.

3) The staff concluded that the Airport need not be considered in an analysis examining the economic relationship between College Park and the Atlanta Urbanized Area because “no resident of College Park lives at the Airport.” *MO&O*, 16 FCC Rcd. 3411 n. 4 (Alloc. Br. 2001). The Commissioners have not yet commented upon whether the world’s busiest passenger airport can

properly be excluded from a regional economic analysis merely because the Airport is not a residential district while other College Park businesses are included in the economic analysis even though no one lives at those businesses. See e.g., Mr. Small's March 30, 2001 *Petition for Reconsideration and Request for Protection*, ¶¶ 32-33 ("it is irrational to require residency at the Airport where residency is not required at any of the other businesses and establishments.").¹

4) Because it has been more than five years since factual information was filed in this case, Mr. Small seeks leave to supplement the factual record in this proceeding concerning The William B. Hartsfield International Airport. A point of agreement between Mr. Small and WNNX is the significant level of importance which should be placed upon the Airport in a *Tuck* analysis of the economic interrelationship between College Park and the Atlanta Urbanized Area within which College Park is located. Because the Commissioners have not yet commented on this issue, and in view of the passage of a significant amount of time since factual information was submitted in this proceeding, it would serve the public interest to consider more current information regarding the Airport and the following is respectfully submitted to supplement Attachments B, C, E, H, I, and J to Mr. Small's August 31, 1998 *Comments and Counterproposal*:

¹ The Commissioners treated Mr. Small's March 30, 2001 *Petition for Reconsideration* as an application for review. See *MO&O*, 16 FCC Rcd. 19857 (FCC 2001). Mr. Small has objected that the manner in which his *Petition for Reconsideration* was handled because Mr. Small was unfairly denied his right to present his full case to the Commissioners. Even with an inadequate review procedure Mr. Small's March 30, 2001 *Petition for Reconsideration*, demonstrates that

the airport is the single defining economic characteristic of College Park and WNNX placed principal reliance upon the airport as demonstrating College Park's economic independence, that is until WNNX learned that the airport is owned by the City of Atlanta. It is improper to exclude the single, biggest economic engine in College Park merely because "no one lives at the Airport."

Mr. Small's March 30, 2001 *Petition for Reconsideration*, at ii; ¶¶ 13-14, 26-29, 32-33, 36.

a) Attachment 1 hereto is a copy from the Airport's web site which shows that the City of Atlanta continues to own and operate the Airport located in College Park and shows that the City of Atlanta owns the copyright to the Airport's web site. The attachment also discusses that regional transportation systems continue to converge at the Airport located within College Park, that the Airport continues to be Georgia's largest employer (44,800 in 2001) (compared to the 33,000 figure presented in Mr. Small's 1998 *Comments and Counterproposal*), that the Airport's annual payroll is now \$1.9 billion (compared to the \$1.48 to \$1.7 billion figures presented in Mr. Small's 1998 *Comments and Counterproposal*), that the Airport's a local and regional impact is now \$3.8 billion (compared to the \$3 billion figure presented in Mr. Small's 1998 *Comments and Counterproposal*), that the Airport has an overall regional impact amounting to \$16.8 billion (compared to the \$15 billion figure presented in Mr. Small's 1998 *Comments and Counterproposal*), and that the Airport's annual operating revenue is now \$248,466,000 (2001) compared to the \$187,589,000 (1996) figure presented in Mr. Small's 1998 *Comments and Counterproposal*.

b) Attachment 2 demonstrates that the Airport is "the world's busiest passenger airport."

c) Attachment 3 demonstrates that the Airport continues to be "the economic engine not just for Atlanta, but also for our state and the entire Southeastern United States." This attachment also states that "as the regional economy continues to grow" the Mayor and the Atlanta City Council plan to spend \$5.4 billion on the Airport which amounts to "the largest public works project in the history of the State of Georgia." While precise figures are not available, the City of Atlanta has annexed additional land from College Park in order to expand it runway and terminal facilities.

5) The Airport was a huge economic engine within the Atlanta Urbanized Area five years ago, it has not become a lesser regional economic factor with the passage of time. These attachments demonstrate that the Airport remains the defining economic engine in the Atlanta Urbanized Area and for the "state and the entire Southeastern United States. Ignoring the Airport as part of the economic

analysis required by *Tuck*, merely because no one lives at the Airport, is as irrational today as it was when the Commission first ignored WNNX's and Mr. Small's comments that the Airport is a significant economic consideration in examining the economic relationship between College Park and the Atlanta Urbanized Area.

6) Mr. Small also seeks leave to supplement the record concerning the civil suit which was threatened and then filed against Mr. Small as initially reported in Mr. Small's September 3, 2002 *Petition for Reconsideration and Second Motion to Reopen the Record*. A very interesting circumstance in the civil suit brought against Mr. Small deserves the Commission's attention. The party which nominally sued Mr. Small, Bridge Capital Investors II (BCI), for allegedly obstructing payment of \$10 million through participation in the captioned proceeding, United States District Court for the Middle District of Georgia (Case No. 3 : 02-cv-80), did not also sue WNNX/Susquehanna for failure to pay. BCI merely accepted, at face value, WNNX/Susquehanna's statement that the \$10 million was not payable because the captioned proceeding prevented the grant of WNNX/Susquehanna's construction permit "from becoming a Final Order." *Order*, filed November 26, 2002, Case No. 3 : 02-cv-80, at 7 (copy attached to Mr. Small's December 13, 2002 *Fourth Motion for Leave to File Supplement*).

7) A reasonable person would expect that one would proceed against a party which had failed to pay a significant sum of money. BCI, however, accepted at face value WNNX/Susquehanna's questionable analysis that the captioned proceeding causes the order granting WNNX's construction permit to be non-final. *See e.g., Application of Pacific Broadcasting of Missouri, LLC*, 18 FCC Rcd. 2291 ¶¶ 4-5 (FCC 2003) (applicant sought removal of an operating condition placed on "the now final" construction permit). The order granting WNNX's CP became final long ago, both under FCC law and under the terms of the BCI/Susquehanna contract. WNNX/Susquehanna's CP contains a condition which would cause the CP to terminate should Mr. Small prevail in the captioned

proceeding, but that condition does not make the CP non-final -- the order granting the CP is final and the Docket 98-112 condition contained therein is final. Rather than proceed against WNNX/Susquehanna, even after the U.S. District Court added Susquehanna to Case No. 3 : 02-cv-80, an event which did not occur until several months after the Judge had issued his November 26, 2002 *Order* ruling that BCI that had no case against Mr. Small, and even after the Commission reminded the public that a permit issued with conditions is a final order, BCI did not proceed against WNNX/Susquehanna for the \$10 million payment. In 1997 FCC filings, WNNX/Susquehanna and BCI, through a predecessor-in-interest, threatened suit on the same grounds asserted by BCI in Case No. 3 : 02-cv-80; WNNX/Susquehanna falsely stated in the captioned proceeding that it had never threatened Mr. Small with civil action. *See Fourth Motion For Leave to File Supplement*, ¶¶ 9-12.

8) BCI's failure to seek damages from WNNX/Susquehanna under these circumstances strongly indicates that BCI and WNNX/Susquehanna are in privity concerning the suit against Mr. Small. Mr. Lipp and WNNX/Susquehanna have demonstrated a proclivity to pursue a victory in the captioned proceeding from behind the scenes. The threats of a civil suit made against Mr. Small, and the civil suit which was filed against Mr. Small, are additional examples of WNNX/Susquehanna acting as puppet master with BCI, Mr. Small, the Senator, and the Commission cast as les marionnettes du Guingol. It is time the Commission lowered the curtain on WNNX/Susquehanna's performance.


9) WNNX has been on the receiving end of some very generous decision making including the Commission's decisions to ignore the Airport and to ignore the first attempt to relocate Station WHMA-FM into the Atlanta Urbanized Area.² WNNX has repaid these courtesies by making illegal

² The Commission is now aware that the proponent of 1990 attempt to relocate WHMA-FM into the Atlanta Urbanized Area, Thomas Gammon, is also involved in this second attempt to relocate WHMA-FM. *See* Mr. Small's September 3, 2002 *Petition for Reconsideration and Second Motion to Reopen the Record*, ¶¶ 31-34 (in Spring 2002 Mr. Gammon issued threats of civil action against Mr. Small); *see also Order*, filed November 26, 2002, Case No. 3 : 02-cv-80, at 8 (copy attached to Mr. Small's December 13, 2002 *Fourth Motion for Leave to File Supplement*) (Mr. (continued...))

threats of civil litigation against Mr. Small in order to procure Mr. Small's dismissal from the captioned proceeding, by having suit filed against Mr. Small in order to procure his dismissal from the captioned proceeding, by filing *ex parte* comments directed against Mr. Small in a neighboring proceeding, and, most recently, by bringing the United States Senate into the Commission's decision making process.³ While Mr. Small does not believe that the Commission's decision making in this case has been supportable in significant respects, it is now abundantly clear that WNNX/Susquehanna is wholly undeserving of the lenient treatment it has received at various points in this proceeding.

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Respectfully submitted,
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Timothy E. Welch
His Attorney

²(...continued)

Gammon would have benefitted financially from the civil suit if BCI had succeeded against Mr. Small).

³ If this is how WNNX/Susquehanna behaves after receiving favorable decisions, one can only imagine what tricks WNNX/Susquehanna would pull if it received an adverse decision in this case. Mr. Small is willing to assume the risk of finding out.

Attachment 1

**Current Ownership and Operating Facts Concerning the Hartsfield Atlanta International
Airport**

Overview

Official Name:

The William B. Hartsfield Atlanta International Airport

Official Shortened Name:

Hartsfield Atlanta International Airport / ATL

Ownership:

The City of Atlanta / operated by its Department of Aviation

Distance From Downtown Atlanta:

10 miles (16.2 kilometers)

Elevation Above Sea Level:

1,026 feet (316 meters)

Latitude:

33° 28' 21.1" North

Longitude:

84° 25' 39.6" West

Total Airport Area:

3,750 Acres (1,518 Hectares)

Terminal Complex:

130 Acres (52.6 Hectares) or 5.7 Million Square Feet. These figures include the Terminal buildings, Concourses A, B, C, D, E and T-Gates.

Accommodations For Persons With Disabilities:

The entire airport complex is free of any barriers to persons with disabilities.

People Mover

The Airport's underground-automated people mover, connecting all concourses with the terminal, consists of nine, four car trains operating on a 3.5-mile loop track. The time between trains, at any 13 stations, is approximately two minutes.

Facts About The People Mover

Stations	14
Fleet Size	40 Adtranz C-100 Vehicles
Train Size	4 Vehicles
Trains in Service	8
Capacity	128,000 Passengers Per Hour
Operating Hours	0500-0230
Switches	18
Guideway	3.5 miles
Cost	\$163,000,000

Ground Transportation

The Metropolitan Atlanta Rapid Transit Authority (MARTA) station is located inside the airport's main terminal at the west end. Other transportation available from the terminal west end includes: 8 on-airport rental car companies with bus service; 3 off airport rental car companies with bus service; 12 scheduled bus service operators to destinations throughout metropolitan Atlanta area; 22 scheduled bus service operators to destinations in Georgia and surrounding states;

Additional Links

[GM Welcome](#)
[Air Cargo](#)
[Airport Construction](#)
[Airport Fact Sheet](#)
[Operating Statistics](#)
[Annual Report](#)
[Airlines at Hartsfield](#)
[Competition Data](#)
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86 limousine operators; 18 hotel/motel shuttle bus operators and 300 taxicabs.

Concessions

There are more than 200 concession outlets throughout the airport, including 75 food and beverage, 82 retail and convenience, and 21 staffed service outlets

Operating Airlines Serving Atlanta

Aeromexico	ASA	JetBlue Airways
Air Canada	British Airways	Korean Air
Air France	Continental	Lufthansa
Air Jamaica	Comair	Midwest Express
AirTran	Corporate Airlines	Northwest Airlines
American Airlines	Delta Air Lines	South African
America West	Frontier	United Airlines
	Hooters Airlines	US Airways

Cargo Airlines Serving Atlanta

Airborne Express	Emery Worldwide	Martinair
Air New Zealand	EVA Air	Mountain Air
Bankair	FedEx	Polar Air Cargo
BAX Global	Japan Airlines Cargo	Qantas
British Airways	Kitty Hawk	UPS
China Airlines	Korean Air	
DHL Worldwide	Lufthansa Cargo	

Operating Statistics

You may find statistics on passengers handled, freight/express handled and aircraft movement operations at the [Operating Statistics Page](#).

Runways

Four Parallel Runways in an East-West Configuration

1. 9R/27L = 9,000 Feet Long (2,743 Meters). Category III.
2. 9L/27R = 11,889 Feet Long (3,624 Meters). Category I.
3. 8R/26L = 10,000 Feet Long (3,048 Meters). Category II.
4. 8L/26R = 9,000 Feet Long (2,743 Meters). Category III.

2001 Airport Operation Revenue

Airport revenue was \$248,466,000 derived from landing fees, concession revenues, parking fees, building and land rentals, and passenger facility charges (PFCs).

Airport Employees

There are approximately 44,800 employees at the airport. This figure includes employees of the airlines, concessionaires, Federal Aviation Administration, City of Atlanta and all airport tenants. The airport is considered to be the largest employment center in the State of Georgia.

Total Annual Payroll

The total airport payroll is \$1.9 billion, resulting in a direct and indirect economic impact of \$3.8 billion on the local and regional economy. The total annual regional economic impact of the airport is over \$16.8 billion.

Attachment 2

Hartsfield Atlanta International Airport Is Now the World's Busiest Passenger Airport

Press Releases

HARTSFIELD RETAINS "WORLD'S BUSIEST" TITLE "Over 76.8 million passengers"

14 Feb, 2003

ATLANTA – Officials at Hartsfield Atlanta International Airport announced today that more than 76.8 million travelers passed through its facilities in 2002. The annual passenger count positions Hartsfield as the "world's busiest" passenger airport for the fourth consecutive year over Chicago's O'Hare International.

According to Airport officials, the state's economic engine surpassed O'Hare for the global title by more than 10 million passengers last year. The figure also represents a 1.33 percent increase in overall passenger volume versus the Airport's 2001 total of 75.9 million passengers. "This demonstrates Atlanta's strength in the marketplace and is a direct result of hard work and commitment from our hub carriers, Delta Air Lines and AirTran Airways," said Aviation General Manager Ben DeCosta. "At Hartsfield, our primary focus is the customer. By constantly surveying and listening to our customers, the Airport is able to provide a level of service that is second to none."

The general manager also stressed that exceeding customers' expectations can help build brand loyalty and ensure repeat business. DeCosta continued, "In December, the Airport accommodated more than 6.7 million travelers, the largest December passenger volume in Hartsfield's history. We served approximately 1 million more travelers in December 2002 than either of the two months during the 1996 Summer Olympic Games in Atlanta."

When comparing Hartsfield's 2002 passenger figures to other major U.S. airports including Chicago O'Hare, Dallas/Ft. Worth, Miami International, and Los Angeles LAX, Hartsfield was the only airport to experience an increase passenger volume.

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Attachment 3

**Hartsfield Atlanta International Airport Continues to be th Economic Engine for Atlanta,
Georgia, and the Southeast**

Hartsfield Development Program

Hartsfield Atlanta International Airport is the economic engine not just for Atlanta, but also for our state and the entire Southeastern United States.

Hartsfield's business revenue impact to the region is almost \$17 billion annually. By the year 2015, this will reach more than \$32 billion annually and our most recent economic impact study estimates that the Airport is responsible for almost 500,000 jobs within our region. In the year 2002 alone, Hartsfield accommodated more than 76 million passengers and this is projected to increase to approximately 121 million passengers by the year 2015.

As the regional economy continues to grow, one of the major challenges has been to expand and modernize Hartsfield to meet the increasing demand for air travel. Therefore, to keep pace with this phenomenal and incredible growth, Hartsfield is in the third year of a 10-Year, \$5.4 billion capital improvement project. It is the largest public works project in the history of the state of Georgia. This Program will address the challenges we face entering a new millennium and will take Hartsfield well into the 21st Century.

With the support of Atlanta Mayor Shirley Franklin and the Atlanta City Council, we expect our development program to reduce delays, accommodate forecasted demand and enhance customer service.

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[Video - Focus in the Future](#)
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Program

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CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of November 2003 served a copy of the foregoing *Fifth Motion for Leave to Supplement the Record* by First-Class United States mail, postage prepaid, upon the following:

The Honorable Senator Richard Shelby
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